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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 000407

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TAGS: KCOR PREL ECON EFIN KE

SUBJECT: KENYA'S ANTI-CORRUPTION AGENCY PLAYS POLITICS, EXONERATES
TWO FORMER MINISTERS

REF: A) 06 Nairobi 4421, B) 06 Nairobi 1439

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Classified By: Ambassador Michael E. Ranneberger for reasons 1.4 (B)
and (D).

¶11. (C) Summary: In a setback to political and judicial accountability in Kenya, the Kenya Anti-Corruption Commission (KACC) went public on January 19 with its recommendation, accepted by the Attorney General, to close investigations against two former cabinet ministers implicated on good evidence in covering up the infamous Anglo-Leasing scandals. In response, the country's former anti-graft advisor went public himself with a stinging indictment of the KACC action and of the Kibaki administration. In an attempt to control the damage, the Attorney General later said the case closures applied only to the charges of cover-up, and that investigations into the actual scandals are continuing. The Kenyan media and civil society have spoken out strongly to call for greater accountability. At the same time, the Kenyan Government has taken positive steps to address the Charterhouse Bank money laundering scandal (ref A). End summary.

KACC Tries to Wipe Clean a Dirty Slate

¶12. (SBU) In a setback to political and judicial accountability in Kenya, the Kenya Anti-Corruption Commission (KACC) went public on January 19 with its recommendation to close the cases against former Justice Minister (and current Energy Minister) Kiraitu Murungi and former Finance Minister David Mwiraria in connection with their alleged cover-up of the Anglo-Leasing procurement scams (see ref B for background). In the January 19 gazette notice, the KACC states its investigation did not "establish commission of any offence," and therefore recommended closure of the cases against Murungi and Mwiraria. According to the notice, KACC recommended closure of the cases in early November, 2006 to the Attorney General, Amos Wako. Wako, himself a player in the Anglo-Leasing deals because he cleared several of the contracts, dutifully accepted the recommendation on January 15.

¶13. (C) In the gazette notice clearing Murungi and Mwiraria of cover-up, the KACC refuted a considerable body of publicly available evidence gathered and published by John Githongo, the former Permanent Secretary for Ethics and Governance, who resigned and went into self-imposed exile in connection with the Anglo-Leasing scandals in February 2005. That evidence strongly indicated that Murungi was at least actively complicit in trying to cover up the Anglo-Leasing

scandals. The KACC recommendation attempts to debunk and discredit Githongo's evidence, and includes the allegation that Githongo refused to provide a signed statement as evidence for KACC investigators.

Githongo: A Bigger Thorn Than Ever in GOK's Side

¶4. (SBU) Githongo came out swinging in the press on January 21 with a point-by-point response to the gazette notice. In a prepared statement and in companion interviews that ran in Kenya's two largest daily papers, he meticulously deconstructs the legal justifications cited by the KACC in closing the cases. The allegation that he refused to provide a formal statement, for example, is "utter nonsense," according to Githongo, who claims (with corroborating witnesses) that he provided extensive written, signed, and tape-recorded material to a KACC investigative team during two days of interviews which took place in London in March 2006.

¶5. (SBU) Githongo's statements explicitly call into question the integrity of his erstwhile ally in the war on graft, KACC Director Aaron Ringera. Githongo repeats his earlier allegation that Ringera during the March 2006 interviews told him point blank that the Anglo-Leasing perpetrators would never be prosecuted before Kenya's general elections in 2007, if ever. In a companion piece published in the Sunday Nation on January 21, Githongo's lawyer, Makau Mutua, goes further and chronicles a number of occasions on which Ringera deliberately attempted to sidetrack the Anglo-Leasing investigations.

¶6. (SBU) Githongo concludes with statements about Ringera that will probably keep the latter awake at night: "He is steadfast in his determination to ensure political expediency triumphs over truth." "His full legal experience appears to have been applied to conceal the truth." "He should resign his position...and apologize to the Kenyan people for using substantial public resources to take them for a ride." And on the affable Attorney General, Amos Wako: "Mr. Wako

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has played his long-term role - that of protecting the incumbent regime from its unlawful acts."

¶7. (SBU) Githongo doesn't stop there. In reference to President Kibaki's role in the scandal: "He certainly knows and always has known what needs to be done." "Complicity in...Anglo-Leasing goes right to the very top, so political accountability is unlikely."

Damage Control: Wako Responds to the Response

¶8. (SBU) Responding to the public outcry caused by the KACC announcement, AG Wako issued a statement on January 22 in an attempt to clarify the action and thus limit the damage done in terms of public opinion. Wako said the KACC's recommendation to close cases against Murungi and Mwiraria referred only to the Githongo allegations that the two had interfered in the investigation of, and tried to cover up, the two Anglo-Leasing deals. The substantive investigations in connection with actual wrongdoing in the scandals, Wako said, are ongoing and "at an advanced stage." He did not say, however, whether there were substantive cases being pursued specifically against Murungi and/or Mwiraria.

Comment

¶9. (C) Wako's attempt at damage control aside, the exonerations in the Anglo-Leasing cover-up are another example of Kenya's political elite closing ranks to stay in power. Not surprisingly in an election year, politics will tend to trump accountability. We could well see more of this kind of behavior in the run-up to the elections later this year. Murungi, after being forced to resign under public pressure less than a year ago, was brought back into the Cabinet in November, before Wako even officially agreed to drop the case against him. After a decent interval to allow public opinion to calm down,

we can expect to see David Mwiraria back in the Cabinet soon, as well.

¶10. (C) Aaron Ringera and the KACC were, only two years ago, seen as the institutional champions in the fight against graft. Both KACC and Ringera now seem tainted by this action. Pressure for decisive action against grand-scale corruption will continue to be maintained by the tenacious John Githongo, who has promised further revelations from his stockpile of evidence. Kudos also to the Kenyan media and civil society for calling the government to account once again. Finally, we caution against letting this latest example of election-year politics obscure other important progress on the governance front, including commendable recent actions by the Central Bank and Finance Ministry in the Charterhouse money laundering scandal (ref A).

Ranneberger